

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DEBORAH TIRADO and MANUEL DIAZ,

Docket #: 1:19-CV-3355

Plaintiffs,

against

THE STOP & SHOP SUPERMARKET COMPANY LLC


Defendant.
-----X

NOTICE OF FILING OF PETITION FOR REMOVAL

PLEASE TAKE NOTICE that defendant THE STOP & SHOP SUPERMARKET COMPANY LLC has on this date filed a Petition for Removal in the office of the Clerk of the United States District Court for the Eastern District of New York.

Dated: Mineola, New York
June 6, 2019

THE STOP & SHOP SUPERMARKET
COMPANY LLC

By: 
CHRISTINE M. CAPITOLO [CMC9098]
TORINO & BERNSTEIN, P.C.
Attorney for Defendant
200 Old Country Rd., Suite 220
Mineola, NY 11501
(516) 747-4301 Fax: (516) 747-5956

CERTIFICATION

This is to certify that a copy of the foregoing has been mailed, postage prepaid on this June 6, 2019, to JONATHAN D'AGOSTINO & ASSOCIATES, P.C., 3309 Richmond Avenue, Staten Island, NY 10312.


CHRISTINE M. CAPITOLO

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DEBORAH TIRADO and MANUEL DIAZ,

Docket #: 1:19-CV-3355

Plaintiff,

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THE STOP & SHOP SUPERMARKET COMPANY LLC

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PETITION FOR REMOVAL

1. THE STOP & SHOP SUPERMARKET COMPANY LLC, is a defendant in a civil action commenced in the SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF KINGS, bearing Index No.: 519744/2018 EFile. A copy of the Summons and Complaint is attached hereto as Exhibit "A".
2. THE STOP & SHOP SUPERMARKET COMPANY LLC is domiciled in, and hence a citizen of the State of Delaware under whose corporate laws it was founded and operates and has its principal place of business in the Commonwealth of Massachusetts.
3. Specifically concerning the issue of diversity, The Stop & Shop Supermarket Company LLC is a Delaware limited liability company (not a Delaware corporation). The Stop & Shop Supermarket Company LLC was formerly known as The Stop & Shop Supermarket Company (a Delaware corporation). Pursuant to a Certificate of Conversion that was filed with the Delaware Secretary of State, The Stop & Shop Supermarket Company converted its structure from a Delaware corporation to a Delaware limited liability company effective as of April 17, 2004.
4. The sole member of The Stop & Shop Supermarket Company LLC is Ahold U.S.A., Inc., a Maryland corporation. The sole shareholder of Ahold U.S.A., Inc. is Ahold Americas Holdings, Inc., a Delaware corporation. The shareholder of Ahold Americas Holdings, Inc. is Ahold U.S.A., B.V., a corporation with its business

address at Piet Heinkade 167 - 173, 1019 GM Amsterdam, The Netherlands. The sole shareholder of Ahold U.S.A., B.V. is Koninklijke Ahold N.V. (with the same business address). In June 2015, Delhaize Group NV/SA, a public limited liability company incorporated under the laws of Belgium, entered into a merger agreement with Koninklijke Ahold N.V. Thus, Koninklijke Ahold Delhaize N.V. is a publicly traded company that could be referred to as the "ultimate parent" of The Stop & Shop Supermarket Company LLC.

5. Upon information and belief, plaintiffs, DEBORAH TIRADO and MANUEL DIAZ, reside at 1039 70th Street, Brooklyn, NY 11228, are citizens and residents of Kings County, State of New York.
6. This action was commenced on or about October 2, 2018 by the filing and purchase of an index number. Thereafter the Summons and Complaint was forwarded to the New York State Secretary of State being received on October 9, 2018. Service of the summons and complaint by the New York State Secretary of State upon this party, THE STOP & SHOP SUPERMARKET COMPANY LLC, was made on or about October 9, 2018.
7. Significant for the purposes of the jurisdiction of this court is that no monetary amount or ad damnum was included in or set forth in the complaint. Nor was any other writing served by plaintiff upon defendant advising of the actual monetary amount being sought of the defendant.
8. Together with its answer served on November 2, 2018, defendant annexed a demand pursuant to CPLR §3017 requiring such a response as to the monetary amount that is being sought of defendant in this action. Plaintiff's counsel did not respond within the time period set forth in the CPLR. Defendant did follow upon this demand.
9. That plaintiff's counsel did delay serving a respond to the discovery demands served by this office, and it was not until on or about May 29, 2019, that responses to defendant's demands were received from plaintiff's counsel dated May 23, 2019

which set forth a demand for damages, that being in the amount of \$2,000,000.00. Said amount being in excess of the jurisdiction amount set forth as a threshold for diversity purposes. See annexed Exhibit "C".

10. Accordingly, this petition is timely as it was filed pursuant to 28 U.S.C. § 1446(b) within 30 days of receipt of the plaintiff's demand for monetary damages in this action. The time for filing this petition has not expired.
11. This action is being removed to Federal Court based upon diversity jurisdiction pursuant to 28 U.S.C. §1332(a).
12. As noted above the parties to this action are citizens of different states.
13. This action is therefore one which may be removed to this Court pursuant to 28 U.S.C. §1441(a) because this Court has original jurisdiction pursuant to 28 U.S.C. §1332(a).
14. Venue is proper pursuant to 28 U.S.C. §1441(a).
15. Pursuant to 28 U.S.C. § 1446(d) this party THE STOP & SHOP SUPERMARKET COMPANY LLC has this day, served upon the Clerk, Supreme Court, Kings County notification of the filing of this petition. A copy of the Notice of removal filed in the Supreme Court is attached hereto as Exhibit "B".

WHEREFORE, pursuant to this provisions of 28 U.S.C. §§1441 and §§1446 defendant respectfully requests that this action be removed from the Supreme Court of the State of New York, KINGS County and henceforth proceed in this Court.

Dated: Mineola, New York
June 6, 2019

THE STOP & SHOP SUPERMARKET
COMPANY LLC

By: 

CHRISTINE M. CAPUTOLO [CMC9098]
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DEBORAH TIRADO and MANUEL DIAZ,

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Defendant.
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REMOVAL PETITION

TORINO & BERNSTEIN, P.C.

Attorneys for Defendant
THE STOP & SHOP SUPERMARKET COMPANY LLC
200 OLD COUNTRY ROAD, SUITE 220
MINEOLA, NEW YORK 11501
<516> 747-4301 Fax: <516> 747-5956

Our File Number: 002/243934